GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 81/Lab./AIL/J/2015, dated 13th July 2015)*

NOTIFICATION

Whereas, an award in I.D.(T) No. 12/2010, dated 9-12-2014 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. Hindustan Unilever Limited (Detergent Factory), Puducherry and Hindustan Unilever Workers Union, Puducherry over promoting juniors overlooking the seniority of 135 workers has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour), that the said award shall be published in the official gazette, Puducherry.

(By order)

A. RAJARATHINAM,
Under Secretary to Government (Labour).

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BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru G. DHANARAJ, B.SC, B.L.,
Presiding Officer, Labour Court.

Tuesday, the 9th day of December 2014

I.D. (T) No. 12/2010

The President,
Hindustan Unilever Workers Union,
Puducherry. .. Petitioner

Versus

The Managing Director,
M/s. Hindustan Unilever Limited,
Detergent Factory,
Puducherry. .. Respondent.

This industrial dispute coming on 25-11-2014 for final hearing before me in the presence of Thiruvalargal M. Veerappan and S. Lenin Durai, Counsel for the petitioner, Thiruvalargal L. Sathish, T. Pravin, S. Velmurugan and V. Veeraragavan, Counsel for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

This industrial dispute has been referred as per the G.O. Rt. No. 187/AIL/Lab./J/2010, dated 20-9-2010 for adjudicating the following:-

(1) Whether the dispute raised by the Hindustan Unilever Workers Union against the management of M/s. Hindustan Unilever Private Limited, Detergent Factory, Puducherry over promoting juniors overlooking the seniority of 135 workers as mentioned in the Annexure is justified or not?

(2) If justified, what relief the 135 workers of the union are entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The facts giving rise to this industrial dispute as stood exposited from the claim petition runs thus:-

The petitioner union is one of the major union in the respondent company which has the 280 members in the employees union and all are employed in the said respondent company. The petitioner union had submitted a representation to respondent company regarding consideration of promotion to 135 workers of the union who have been put in the service of around thirteen years. But the respondent company refused to give promotion to them.

The petitioner's employees union has taken up the issue of non-consideration of promotion to the union members of 135 employees and denial of promotion to the said employees to the next cadre who have been put in the service of more than thirteen years with the respondent company, but the respondent company failed to see the reason and acted arbitrarily and against established law.

While denying promotion to the said 135 employees, the respondent company has given promotion to some 70 employees without any basis.

Without adhering the basic principles of seniority of the employees in the said company the promotion was considered and given to the above said 70 employees. The company has stated that promotion would be considered on the basis of the criteria laid down in Part 'C' 2(d) as per the terms and conditions of the broad criteria for eligibility for upgradation/promotion shall be as follows:-

(i) Minimum five years service in the company.

(ii) No record of disciplinary action over the last three years.

(iii) Regular attendance of the minimum 240 days each year for the previous 3 cosecants years of service.

(iv) Performance on the job including multi-skilling and flexibility.

(v) Needless to mention that upgradation/ promotion will be at the sole discretion and management and shall be non-negotiable.

As per the broad criteria for eligibility for upgradation/promotion was mentioned in the memorandum of settlement in the year 2002, there is no proper rule was framed or guidelines was issued by the respondent company to implement the criteria for eligibility for promotion.

The petitioner union was not a party to the memorandum of settlement executed in the year 2002. The most of the agreed terms are widely balancing on the management side and there are unspecific, uncertain and ambiguity clauses found in the said settlement. The point made in the settlement as if the management cannot be questioned on such terms and conditions is absolutely arbitrary and cannot be enforced as per law. Therefore, the discretionary power enumerated in the Clause-V is absolutely constitutional and unlawful and therefore the management could not take any advantage under the guess of this clause and stating that upgradation/ promotion could be done at the mercy of management.

There is also another memorandum of settlement which come into force in the year 2007 and will be in force till 2011. In the said memorandum of settlement, the criteria for eligibility/promotion to the staff is not at all mentioned and the management failed to incorporate many important items or omitted in the said memorandum of settlement and when the employees union raised question about many important points were not covered, the management failed to give valid clarification or explanation. But they simply said that the omitted items in the memorandum of settlement of 2007 may be covered as per the memorandum of settlement existed in the year 2002.

Out of the 135 employees there are 88 employees are non-technical employees and the remaining 47 only technical employees. The eligibility criteria for upgradation/promotion as stated in Part 'C' 2(d) (IV) is applicable only to skilled employees and it may not be applicable to non-technical employees like packer, house keeper, scavenger, forklift operator and similar employees. The management by taking advantage of broad criteria for eligibility for promotion as stated in the settlement in the year 2002, should not refuse promotion/upgradation to the said employees. Even the technical employees who fulfill criteria as per Part 'C' 2(d) (I) (II) (III) (IV) as per settlement are entitle to be promoted to another higher grade/post. But the management taking advantage of the Part 'C' 2(d) (V) so far denied upgradation/ promotion to the all 135 employees which is arbitrary, unconstitutional and contrary to the procedure laid down in this regard.

The respondent company was informing the employees union that the upgradation/promotion would be considered only on the basis of the above said criteria and also basing on seniority-*cum*-merit basis. But, it may be noticed that the respondent company have never issued any seniority list to anyone of the employees in this case so far. Unless the company issued seniority list to all the employees and maintain a seniority list every year, the question of seniority-*cum*-merit may be accepted and that too only for the technical employees but the management has not maintain any such seniority list and the same was not published and communicated to the staff of the company.

The management's standing order which is a basic constitution to run the company fail to indicate the provision of appointment, regularization, promotion and such other important aspects in the said standing order. Therefore, neither the standing order nor the terms and conditions as per the memorandum of settlement 2002 and 2007 have clearly indicated the promotion policy in terms of rules or guidelines so as to make mandatory and transparent to follow by management as well as employees. Therefore, the respondent company failed to follow equality of treatment in equal circumstances as per Article 14 of the Constitution of India and also failed to act as per Article 16 of the Constitution of India wherein equality of opportunity should given but the above said employees were denied promotion arbitrarily and only some people were given promotion without following any rules, guidelines and without any basis and as such the act of the management construed to be unfair, arbitrary and goes against the spirit of the principles of laid down rules in this regard.

The management have admitted that there are two types of employees engaged in the company and the one technical staff and another is non-technical staff but the respondent management failed to provide specific provisions for upgradation/promotion to the technical and to the non-technical staffs and therefore, the failure of or refusal of consideration

of promotion to the abovesaid aggrieved employees is not justified and therefore the management act of refusal to give promotion/upgradation is arbitrary, unfair and therefore illegal.

The technical employees and non-technical employees list are furnished in the list of documents and their details and period of service and their position from the date of appointment to till date are also furnished in the said statement which may kindly be perused please. This would clearly point out that respondent management is not only acting unfairly, unconstitutionally but also acted arbitrarily and therefore refusal of consideration of promotion to the abovesaid employees by the respondent management is totally illegal and unconstitutional.

The issue of not giving promotion to 135 workers who are seniors in the company and put into several years of service and also fulfilled the eligibility criteria was represented by the petitioner union with the respondent management. Since the management refused to consider the issue to give promotion to the said employees the matter was taken up with the Labour Officer (Conciliation) to seek the interference of the competent authority to render justice to the abovesaid affected employees.

The petitioner raised labour dispute before the Labour Officer (Conciliation) and the conciliation proceedings in which the Labour Officer advised the management to consider the promotion of 135 employees who have been put in the service of around thirteen years in the said company. But the respondent company adamantly refused to consider the views of the Labour Officer (Conciliation) and the proceedings ended in failure and therefore the failure report was issued on 20-5-2010 and consequently, the matter was referred to this court for adjudication.

The refusal of giving upgradation/promotion to the 135 employees of the said company although they fulfilled the eligibility criteria is arbitrary, unfair and therefore not maintainable in law for the following among other reasons.

The petitioner union reserves the right to file additional claim statement/reply statement as and when it is required.

Grounds:

(i) The management refusal of consideration of upgradation/promotion to the 135 employees is violation of basic principles of constitutional law under Article 14 and Article 16 and constitutes unfair labour practice and therefore it is not maintainable in law.

(ii) The failure to follow the standard guidelines/ rules for promotion to the technical as well as non-technical employees of the said company who are otherwise eligible for promotion are arbitrary and therefore denial of promotion/upgradation to the said employees of the management is unfair and unlawful and therefore not maintainable in law.

(iii) This court pleased to pass an order directing the respondent management to consider the promotion of 135 employees and they may be given the upgraded salary from the date on which they are eligible for promotion/upgradation and further the management may be directed to pay the increment of pay and other salary benefits and also other permissible benefits to the abovesaid employees.

(iv) To pass orders and such other orders that this court may deem fit and proper under the circumstances of the case.

3. *Per contra*, traversing the averments the claim statement, the respondent filed the counter with the averments which runs thus:-

On justification of promoting juniors overlooking the seniority of 135 workers and if it is justified, the relief that 135 workers of union are entitled to. But in the claim statement, the petitioner is seeking for a direction to the respondent to consider promotion of 135 employees and upgradation of their salary, increment and other benefits. There is no reference regarding consideration of promotion of petition-mentioned workers. Therefore, the claim statement filed by petitioner is not in accordance with the reference made by Government and hence, no relief can be granted in terms of relief sought for in the claim statement.

The dispute raised by petitioner union challenging alleged promotion to juniors allegedly overlooking the seniority of 135 workers is not an industrial dispute which can be adjudicated before this Tribunal and hence, the very reference of the said dispute by Government of Puducherry is bad in the eye of law. It is gainsaid that matters covered under Schedule- III of Industrial Disputes Act alone can be referred for adjudication to Industrial Tribunal. Schedule-III of the Industrial Disputes Act prescribes the following matters to be referred for adjudication before this Tribunal namely :—

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;

4. Leave with wages and holidays;
5. Bonus, profits sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed.

The issue of promotion is not an issue covered under Schedule-III of Industrial Disputes Act and hence, there is no scope for adjudication of the said dispute before this Tribunal.

Petitioner claims that juniors have been promoted ahead of 135 senior workers. But, none of the so called juniors who are said to be promoted have been made a party to the proceedings. Section 2(k) of Industrial Disputes Act defines industrial dispute as—

> "2(k) 'industrial dispute' means any dispute or difference between employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person..."

Thus, all disputes between workmen and workmen also are covered within the meaning of industrial dispute and hence, if the petitioner union has any grievance regarding alleged promotion of so called junior workers, they ought to have made those junior workers party to this proceeding. None of so called juniors were summoned by the Labour Officer (Conciliation) in connection with the dispute raised by petitioner union. In fact, event he bare minimum particulars of those 70 workers like their names, their employment numbers, their date of enrollment, their designation etc., have not been furnished. In the absence of those workers, the 1st issue of reference cannot be fairly adjudicated and hence, the present dispute is liable to dismissed on this count also.

The respondent putsforth the above issues as preliminary issues and requests this Tribunal to adjudicate these issues before adjudication to the fact involved in the case.

Without prejudice to the aforementioned contentions, the respondent states that even on merits, the petitioner do not any substance in its claim and the same is liable to dismissed.

Firstly the averments in the claim statements to the effect that:-

(a) The petitioner union is a major union and has 280 workers of respondent company as its members.

(b) The union ever made any representation to the respondent seeking promotion of 135 workers and the respondent refused to consider them at any point of time.

(c) The respondent ever acted arbitrary are against established law.

(d) The respondent gave promotion to 70 workers without any basis but, denied promotion to 135 workers.

(e) The respondent did not adhered principles of seniority and promotion was given to 70 workers without considering the said principle.

(f) No proper rules, regulations or guidelines exist in respondent company to implement the scheme of promotion.

(g) The petitioner union was not a party to the memorandum of settlement signed in the year 2002.

(h) The agreed term in the said settlement were widely balancing on management side and there was any ambiguity, uncertainty in the clauses of settlement there is any arbitrariness in terms of promotion and they are unconstitutional and unlawful.

(i) Important clauses or items are omitted to be mentioned in 12(3) settlement signed in the year 2007, the eligibility criteria for promotion as stated in Part C (2) (d) (IV) is applicable only to skilled employees and not to technical employees like packer, house keeper, scavenger, forklift operator and similar employees.

(j) The respondent, taking advantage of the Part 'C' 2(d) (V) of the said memorandum of settlement, has so far denied upgradation/promotion to all 135 workers which is arbitrary or unconstitutional.

(k) No seniority list is maintained or issued by the respondent.

(l) Neither the standing order of the company nor the terms and conditions in the memorandum of settlement in 2002 and 2007 clearly indicates promotion policy in.

(m) Respondent failed to follow equality of treatment in equal circumstances as per Article 16 of Constitution of India.

(n) Respondent is acting unfairly, unconstitutionally, arbitrarily.

(o) The respondent refused to consider the petition mentioned workers for promotion, which is illegal and unconstitutional.

(p) The respondent was advised by Labour Officer (Conciliation) to consider the promotion of 135 workers who have been put in the service of around thirteen years in the said company.

(q) Respondent company adamantly refused to consider the views of the Labour Officer (Conciliation).

(r) The petitioner are entitled to any relief as sought for in the claim petition.

Are emphatically denied as false and baseless and the petitioner is put to strict proof the same.

The respondent states that seniority of each of its employee is easily and clearly ascertainable by the token number given to each of the workers. The token numbers are given in ascending order, beginning with the senior most workers. Therefore, the grievance of petitioner union that no seniority list is maintained or disclosed by respondent is totally false and baseless. The list of worker with their respective token number and their date of joining is annexed herewith as Annexure-1, which indicates the date of enrollment of each of the workers. In the said list of workers, serial number 39 to 43 are workers containing token number: 559 to 564. But, they are not juniors to the other listed workers given in the claim petition. In fact, these workers joined the respondent factory during 2007 with previous experience of 13 years in another industry belongs to Hindustan Unilever Limited and had thorough exposure to the factory work.

The respondent states that it is absurd to claim that the respondent has no concrete or transparent promotion policies. The promotion policies are well defined and accepted by then and only union representing all the workers of respondent factory in 2002. In the memorandum of settlement, dated 12-12-2002, the respondent has spelt out the criteria for eligibility for upgradation and promotion which is adopted by respondent throughout all its factories including the respondent unit from the date of its inception. The promotion policies of the respondent and as admitted by the petitioners themselves are—

(a) Minimum five years' service in the company.

(b) No record of disciplinary action in the last three years.

(c) Regular attendance of minimum 240 days each year for the previous 3 years consecutive in the service.

(d) Promotion in the job including multi-skilling and flexibility

(e) Upgradation and promotion at the sole discretion of respondent and it is non-negotiable.

The five criteria are the most fundamental and basic and yet essential requirements for consideration for promotion of any worker. The criteria specified above clearly indicate that the promotion policy of respondent is based on merits, discipline and continuity of services. It is gainsaid that promotion or upgradation cannot be claimed as a matter of right as the same is within the sole discretion of management as long as the discretion is used by the management in fair, equitable and just manner without any bias, vindictiveness or favouritism.

The promotion policy is well settled and widely accepted by the workers and there was no dispute regarding the same when the next settlement, dated 10-5-2007 was signed. Hence, it was not included in the terms of settlement, dated 10-5-2007. It is of common knowledge that only the disputed issues find their place in the settlement and not undisputed issues. Pertinently, even the petitioner union did not raise any dispute regarding promotion policy in its charter of demands preceding 12(3) settlement, dated 10-5-2007. Other than petitioner, there are two more unions and they have not raised any dispute regarding fairness of promotion policy of respondent as on this date. Therefore, promotion policy as found in settlement, dated 12-12-2002, still holds good for all practical propose and there is absolutely no ambiguity or vagueness in the said policy.

The petitioner cannot compel the respondent to adopt the policy of seniority-*cum*-merit in promotion or upgradation and respondent is free to give precedence to merits, discipline and conduct of worker over his seniority. The claim of petitioner is therefore contrary to the well-established principle of promotion or upgradation.

The petitioner's accusation that the certified standing order of the respondent company does not contain promotion policy is again a void allegation and reflects the ignorance of petitioner union regarding the ambit in which certified standing orders of the company operates. The Industrial Employees Standing Order Act does not mandate promotion policy to be incorporated in certified standing orders of the company. In fact, the Model Standing Orders given in Annexure of said Act does not contain any promotion policy, thus making it clear that promotion policies need not form part of certified standing orders.

The petitioners is deliberately misinterpreting Part-C 2(d) (iv) of settlement, dated 12-12-2002 by claiming that it is applicable only to skilled employee and not to non-technical like packers, house-keepers, scavenger, forklift operators, etc. The petitioner is misquoting the term 'multi-skilled' used in the provision, which denote the ability of a worker to do more than one activity in a skillful manner. Such activities can be both technical and non-technical. The logic being inclusion of such criteria as consideration for promotion is that a person who has ability to do more than one activities can be easily accommodated in any position. For eg., if a packer exhibits good skill in lift operation, he can be considered for promotion for the post of packers as well as forklift operators depending upon the requirements of the respondent.

The petitioner's allegation of unfair practice in promoting 70 workers ahead of 135 workers listed in the petition is as vague as vagueness could be. Assuming without admitting that respondent had promoted 70 workers ahead of workers listed in claim petition, that by itself is not sufficient for the petitioner to claim promotion for themselves. The petitioner must plead and prove that the respondent has acted in a *mala fide* manner in promoting the ineligible workers and denying promotion to workers listed in claim petition by giving specific instances of such *mala fide* act of respondent. The petitioner cannot make bald and vague allegation of denial of opportunity in promotion without pleading specific instance of any bias, *mala fide* act or vindictiveness on the part of respondent in denying promotion to workers listed in claim petition.

Petitioners cannot claim promotion on the sole grounds that they are seniors in the respondent company. The petitioners must plead and prove to the satisfaction of this Tribunal that they possess all the other requirements enlisted in the promotion policy *viz.*, (a) they do not have any past records of disciplinary action, (b) they have regular attendance of 240 days in the previous 3 consecutive years and (c) they are multi-skilled. The petitioner has not even pleaded that the workers listed in claim petition satisfy all the criteria to be considered for promotion.

It is false to claim that there is no clear division of skilled or non-skilled workers. In fact, the list given by the petitioner itself suggests that there is a clear division between technical worker and non-technical workers. Admittedly, there are two categories of workers in respondent's factory; one is unskilled and the second is skilled workers. The unskilled workers are further categorized into two groups (a) W1 and (b) W2. The skilled workers are categorized as W3 and W4.

As per the 12(3) settlement, dated 10-5-2007 W1 workers are further classified into W1E, who are entry level workers under unskilled category (W1). The W1E workers are not considered for promotion for initial period of 5 years. But, as soon as he completes a period of 5 years he automatically becomes W1 worker and from thereon he becomes eligible to be promoted to the next level *i.e.*, W2 category. The W1 worker's performance is assessed based on his past conducts as per the promotion policy. Before promoting a worker from W1 to W2 categories, the respondent conducts multilevel interviews. In the 1st level the worker is interviewed by respondent's line executive and line manager of respective department. Once the worker clears the 1st level of interview, the 2nd level interview is conducted by Finance Manager, the H.R. Manager, Line Manager and the Factory Manager. The performance of the worker is thoroughly scrutinized and only eligible and deserving workers are promoted to W2 level.

The skilled workers are categorized as W3 and W4. They are ITI qualified. The same process of promotion is followed for W3 and W4 workers also. The unskilled workers also have every chance of upgrading themselves to the category of skilled workers by their experience and skills gained during the course of their employment.

It commissioned its operation in the year 1997 and as on date it has promote only 109 workers from all categories. The last token number promoted by the respondent is token No. 200. The list furnished by the petitioner along with claim statement clearly shows that except for the first 12 workers in the unskilled categories and the first 9 workers in the skilled categories, the rest of the workers are juniors to the last incumbent promoted and therefore they cannot have any grievance.

The list of workers promoted by it as on this date is annexed herewith. In the said list of workers, serial number 39 to 43 are workers containing token number: 559 to 564. But, they are not juniors to the other listed workers given in the claim petition. In fact, these workers joined the respondent factory with previous experience of 13 years in our another industry and had thorough exposure to the nature of work.

The reason for not promoting some of the senior workers like R. Muthukrishnan bearing token number 44 (currently this person is not in the company employment) and M. Gopalakrishnan bearing token number 78 etc., is that they failed to satisfy the essential criteria for promotion or upgradation. Some of the workers listed in the claim petition are facing serious charges of misconducts and many of them do not possess necessary attendance. Therefore, they cannot

be considered for promotion because of past records. There is absolutely no motive or reason behind non-consideration of such candidates for promotion except their own conducts. There is absolutely no merits the claim of petition and hence, claim may be dismissed.

There is absolutely no merit in any of the allegation contained in the petition and therefore the present application is liable to be dismissed with exemplary cost.

The respondent reserves its right to file additional counter statement together with all the necessary and relevant documents with the permission of this Tribunal.

This court may be pleased to dismiss the claim petition with exemplary costs and answer the reference accordingly and justice be rendered.

4. On the side of the petitioner, PW1 was examined, and the side of the respondent RW1 was examined, on the petitioner side Ex.P1 to Ex.P6 were marked. On the side of the respondent, Ex.R1 to Ex.R30 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed? or not?

6. *On this point:*

Heard. It was submitted by the counsel for the petitioner that the petitioner's were employees of the respondent company and the respondent management did not consider the upgradation of the petitioner union employees and the petitioners are eligible for the promotion. The matter was conciliated but, the respondent management did not concede the advice of the Conciliation Officer. The respondent management without any proper reason refuse to promote the petitioner's to the higher post, the petitioners are eligible for the higher post.

7. On behalf of the respondent, it was submitted that the dispute pending before this court cannot be adjudicated by this forum. The dispute regarding the promotion cannot be decided as it was not mentioned in the Schedule-III of the Industrial Disputes Act and also the petition is bad for non-joinder of necessary parties. The persons who were alleged to have been promoted were not added as a party in this case. The promotion policy of the respondent company was well-defined and was settled as per the settlement, dated 12-12-2002 and also the settlement, dated 10-5-2007. The promotion policy was applicable for both skilled and unskilled workers. The workers in the respondent management factory were categorized as skilled and unskilled labourers. The skilled workers are categorized as W3 and W4 based on the sound promotion policy. The promotion was in a transparent manner and the eligible and deserving candidates were promoted to the next level. Respondent had promoted 109 workers from all categories, the respondent company had given specific reasons for the non-promotion of the senior workers in the concerned records. The Hon'ble High Court had ruled to that effect to substantiate the views of the respondent company. Hence, the petition is to be dismissed.

8. After hearing both sides. Records were perused. On behalf of the petitioner PW1 was examined and Ex.P1 to P6 were marked. On behalf of the respondent RW1 was examined and Ex.R1 to R30 were marked. It was the case of the respondent that the matter cannot be referred to this forum as it was not mentioned in the Schedule-III of the Industrial Disputes Act. Accordingly, a perusal of the evidence of PW1 at the time of cross-examination who would say as follows:-

> "வழக்கு சம்பந்தப்பட்ட 135 தொழிலாளிகள் எங்கள் சங்கத்தில் சார்ந்தவர்கள் என்று கோரிக்கை மனுவில் (CP)-யில் குறிப்பிடவில்லை. ஆனால், சமரச அதிகாரியிடம் கூறியுள்ளோம். வழக்கில் கண்டுள்ள 135 தொழிலாளர்கள் உண்டான பட்டியல் நாங்கள் 3-4-2009 அன்று கொடுத்த கடிதத்தின் பி.6 (பக்கம் 16)-ல் கண்டுள்ள கடிதத்தின் வாயிலாக பட்டியல் கொடுத்துள்ளோம். அந்தக் கடிதத்தில் வழக்கு சம்பந்தப்பட்ட 135 தொழிலாளர்கள் எங்கள் சங்கத்தைச் சார்ந்தவர்கள் என்று குறிப்பிடவில்லை. 135 தொழிலாளர்கள் எங்களுக்குத் தொழில்தாவா எழுப்புவதற்கு அதிகாரம் கொடுத்ததாக எந்த ஒரு இணைப்பும் நாங்கள் சமரச அதிகாரி முன்பு சமர்ப்பித்ததாக எந்தக் கடிதமும் இங்கு தாக்கல் செய்யவில்லை".

A cursory reading of the evidence of PW1 at the time of cross-examination would show that the dispute, namely, the promotion of the employees other than the persons mentioned in the petition and non-promoting the persons mentioned in the reference, was not authorised by the Act, especially, section 2(A) of the Industrial Disputes Act. Because, it has been held in a case as reported in 2012 IV LLJ Pg.700 (Madras) T.M. Ramamoorthy *Vs.* Union of India, represented by the Secretary to Government, Labour and Employment Department, New Delhi and Others as follows:-

> "Industrial Disputes Act (14 of 1947) - sections 2(k) and 2-A - Issue relating to promotion of employee, held, would not be industrial dispute, and could not be raised by individual workman, as such issue could not be considered to be in respect of non-employment".

A careful observation of the abovesaid ruling, wherein, it has been clearly held that the issue relating to promotion of the employee would not be a industrial dispute and could not be raised by individual workman, as such issue could not be considered to be in respect of non-employment.

9. It has been held in a case B.K. Sbarma *Vs.* State of U.P., 1976 (32) FLR 280 *vide* Industrial Disputes Act, Justice D.D. Seth, 9th edition, Pg.519 as follows:-

"Section 2-A contemplates dispute arising out of discharge, dismissal, retrenchment or termination of services of individual workman and not other service conditions. Where a workman is employed for a fixed period with a condition that his right to continue will automatically come to an end on expiry of the period, this section has no application".

10. In the light of the abovesaid rulings a perusal of the records on hand which would also reveal that the case of the petitioner's that the problem *i.e.,* the dispute, *i.e.,* promotion, which was said to have been denied to the petitioners, was not a dispute which should be decided by the concerned forum constituted under the Industrial Disputes Act.

11. A perusal of the evidence of RW1 who would say at the time of cross-examination as follows:-

"2002, 2006 settlement, part C-ல் promotion must given to those who have merit with clean upper hand என்று உள்ளது".

A cursory reading of the abovesaid RW1 which would show the fact that there was a settlement during the year of 2002 and 2006 regarding the promotion policy and also a perusal of the Ex.R3 would also the reveal the fact that there was a settlement between the employees and employer of this dispute, namely, the petitioner and the respondent respectively. A perusal of the Exs.R4, R5, R6 and R7 would also reveal the fact that the respondent management had adopted a promotion policy and considered the employees, efficiency and other related factors for promotion.

12. But, on the other hand, it was not established by the petitioner that the petitioner's, namely, 135 workers who were claiming the promotion as referred in the reference were eligible for promotion by adducing the substantial documents before this court. The documents produced by the petitioner's, namely, Ex.P1 to P5 were not establishing the case of the petitioners as how the petitioners were eligible for promotions overlooking the persons already promoted as alleged.

13. It has been held in a case as reported in 2011-IV-LLJ-34(Madras) Pg.34, President, represented Chennai Petroleum Employee's Union, Chennai *Vs.* General Manager (H.R.), Chennai Petroleum Corporation Limited, Chennai as follows:-

"Performance appraisal procedure adopted by management was held not illogical".

In the light of the abovesaid ruling a perusal of the records on hand, the court decided on a considered view that the abovesaid proposition of the law laid down by the Hon'ble High Court of Madras is also squarely applicable to the given case.

14. Hence, the court decided on a considered view, that the case of the petitioner was not established by the petitioner's either on facts or on law and the same is to be rejected and the reference made by the concerned authority be closed as devoid of merits. Accordingly, it is ordered that the reference is closed as it was not established by the petitioner's as claimed.

15. In the result, the reference made by the Government of Puducherry in G.O. No. 187, dated 20-9-2010 was closed, as the petitioners, wherein, were not establishing the claim and the petitioner's were not entitled for any relief as claimed. Accordingly, it is ordered.

Typed to my dictation, corrected and pronounced by me in the open court on this the 9th day of December 2014.

G. DHANARAJ,
Presiding Officer, Labour Court,
Pondicherry.

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List of petitioner's witness:

P.W.1 — 6-8-2013 — C. Ezhil

List of respondent's witness:

RW1— 14-2-2014 — J. Joseph Alexander

List of petitioner's exhibits:

Ex.P1 — Copy of the Employees union letter address to respondent to consider promotion to the employees, dated 19-2-2009.

Ex.P2 — Copy of the list of employees who have been affected.

Ex.P3 — Copy of the Memorandum of Settlement (2002), dated 12-12-2002.

Ex.P4 — Copy of the employees union representation to the Labour Officer in respect of the affected employees, dated 26-2-2010.

Ex.P5 — Copy of the Labour Officer (Conciliation) failure report, dated 20-5-2010.

Ex.P6 — Copy of the various representation made by the labour union to the respondent, dated 7-12-2009.

List of respondent's exhibits:

Ex.R1 — Copy of the letter of authorization for Joseph Alexander, dated 5-2-2014.

Ex.R2 — Attested copy of the order of transfer of P. Canbady (T.No. 559), S. Gobi(T.No. 560), S.A. Sankar (T.No. 561) and T. Sasikumar (T.No. 563) from Biopolymers and Hosur Tea Units to respondent's factory and his absorption in respondent factory (To prove that he has been transferred and not promoted as mentioned in claim statement), dated 18-11-2005.

Ex.R3 — Attested copy of the 12(3) settlement, dated 12-12-2002 and 10-5-2007 (To show the criteria for promotion), dated 10-5-2007, 12-12-2002.

Ex.R4 — Attested copy of the assessment of J. Sivakumar (T.No. 151) with his appraisal forms and other papers, giving insight on procedures being adopted by respondent in promotion of workers. (To show the promotion process followed as per the criteria in a just and fair manner).

Ex.R5 — Attested copy of the assessment of V. Meganathan (T.No. 200) and with his appraisal forms and other papers, giving insight on procedures being adopted by respondent in promotion of workers. (To show the promotion process followed as per the criteria in a just and fair manner).

Ex.R6 — Attested copy of the list of promotions given by respondent from 2006 to 2013. (To show that till 2010 promotions have been made only up till T.No. 200 and so, all employees in list of 135 workmen appearing after 200 are not qualified for promotion on grounds of seniority and also that 74 promotions have been done as against the 70 claimed by petitioner as on 1-11-2008).

Ex.R7 — Attested copy of the statement relating to some of the workers mentioned in present dispute giving reasons for their disqualification to promotion from 2007 to 2010. (To give justification for non-promotions of the 21 employees from list of 135 employee submitted by petitioner).

Ex.R8 — Attested copy of the charge sheet issued to R. Muthukrishnan (T.No. 44) for various misconducts committed by him and its punishment order, his pay slip for month of December 2008 for inadequate attendance. (To give proof of justification for disqualification from 2007, 2008 and 2010 promotion process), dated 16-12-2005, 24-10-2005, 8-10-2005.

Ex.R9 — Attested copy of the advisory letter issued to A. Senthilvel (T.No. 59) and his pay slips for the month of April 2006, December 2008 and 2009 for lack of attendance. (To give proof of justification for disqualification from 2007, 2008 and 2010 promotion process), dated 18-5-2006.

Ex.R10 — Copy of the pay slips of M. Gopalakrishnan T.No. 78 for the month of December 2005, 2007, 2008 and 2009 and the dismissal letter issued to him. (To give proof of justification for disqualification from 2007, 2008 and 2010 promotion process).

Ex.R11 — Attested copy of the performance development plan and assessment sheet of Ayup Khan (T. No. 118) for the year 2006. (To show that he had qualified but failed in the promotion interview), dated 27-12-2007.

Ex.R12 — Attested copy of the promotion letter sent by respondent to T. Jayapal (T.No. 120). (To show that he had qualified and has been promoted), dated 26-2-2011.

Ex.R13 — Attested copy of advisory letter and April 2006 pay slip issued to V. Manogaran (T.No. 123), giving details of his attendance for the year 2006. (To give proof of justification for disqualification from 2008 and 2010 promotion process), dated 18-5-2006.

Ex.R14 — Attested copy of the show cause notice issued to A. Ravi (T.No. 144). (To give proof of justification for disqualification from 2010 promotion process), dated 10-1-2006.

Ex.R15 — Attested copy of the pay slips of R. Selvaraj (T.No. 150) for the month of December 2007, 2008 and 2009 giving details of his attendance. (To give proof of justification for disqualification from 2010 promotion process.

Ex.R16 — Attested copy of the interview evaluation form of B. Uthayakumar (T.No. 168). (To show that he was not recommended for promotion during the promotion interview).

Ex.R17 — Attested copy of the interview evaluation form and employee appraisal form of R. Venkatesan (T.No. 169) for the year 2006. (To show that he had qualified for 2010 promotion process but failed in the promotion interview).

Ex.R18 — Attested copy of the Annual Performance Appraisal form of K. Kuppusamy (Token No. 175). (To give proof of justification for disqualification from 2010 promotion process).

Ex. R19— Attested copy of the pay slips of D. Thulasinathan (T.No.181) for the month of December 2009 giving details of his attendance and his dismissal form (To give proof of justification for disqualification from 2010 promotion process), dated 30-10-2013.

Ex.R20 — Attested copy of the charge sheet of S. Ethirasu (T.No. 183) issued in 2007. (To give proof of justification for disqualification from 2010 promotion process), dated 1-3-2007.

Ex.R21 — Attested copy of the charge sheet and warning letter issued to C. Ezhil (T.No. 184) in 2008 and 2009, (To give proof of justification for disqualification from 2010 promotion process), dated 18-11-2008, dated 26-3-2009.

Ex.R22 — Attested copy of the promotion letters along with interview appraisal forms of S. Kumaravenkatraman (T.No. 185). (To show that he had qualified for 2010 promotion process and has been promoted), dated 21-2-2011.

Ex.R23 — Attested copy of the promotion letters along with interview appraisal forms of P. Murugan (T.No.186). (To show that he had qualified for 2010 promotion process and has been promoted), dated 20-12-2010.

Ex.R24 — Attested copy of the pay slips of K. Ramesh (T.No. 189) for the month of December 2009 giving details of his attendance for the year. (To give proof of justification for disqualification from 2010 promotion process).

Ex.R25 — Attested copy of the resignation letter submitted by K. Ramesh (T.No. 189), his relieving order, service certificate and cheque represents full and final settlement. (To show that he has resigned and his full and final settlement has been properly completed), dated 5-7-2010.

Ex.R26 — Attested copy of the warning letter issued to V. Theivanayagam (T.No. 190). (To give proof of justification for disqualification from 2010 promotion process), dated 7-9-2009.

Ex.R27 — Attested copy of the promotion letters along with interview appraisal forms of K. Kumaran (T.No. 197). (To show that he had qualified for 2010 promotion process and has been promoted), dated 20-12-2010.

Ex.R28 — Attested copy of the promotion letters along with interview appraisal forms of K. Madanagobalan (T.No.198). (To show that he had qualified for 2010 promotion process and has been promoted), dated 9-2-2011.

Ex.R29 — Attested copy of the excel sheet containing the date of promotion given to 26 workers out of 135 workers mentioned in the claim statement. (To show that 26 out of 135 employees so claimed by petitioner have been promoted already and as and when the positions are available promotions will further be done)

Ex.R30 — Attested copy of the dismissal order of V. Elumalai (T.No. 404), dated 5-11-2013

G. DHANARAJ,
Presiding Officer, Labour Court,
Pondicherry.

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 82/Lab./AIL/J/2015, dated 14th June 2015)*

NOTIFICATION

Whereas, an award in I.D.(T)2/2012, dated 21-1-2015 of the Industrial Tribunal, Puducherry in respect of the industrial dispute between the Managing Director, Tamil Nadu State Transport Corporation, Puducherry and the President, Puduvai Pradesa Pokkuvarathu Thozhilalar Sangam, Puducherry over charter of demands such as 2nd review of monthly salary *w.e.f.* 2002 onwards and recovery of illegal deduction of wages along with arrears of Thiruvalargal Panchanadhan and R. Rajendiran has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's

G.O. Ms. No. 20/91/Lab./L. dated 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette Puducherry.

(By order)

A. RAJARATHINAM,
Under Secretary to Government (Labour).

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BEFORE THE INDUSTRIAL TRIBUNAL AT PONDICHERRY

Present: Thiru G. DHANARAJ, B.SC., B.L.,
Presiding Officer, Industrial Tribunal.

Wednesday, the 21st day of January 2015.

I.D. (T) No. 2/2012

The President,
Puduvai Pradesa Pokkuvarathu
Thozhilalar Sangam,
Puducherry. . . Petitioner

Versus

The Managing Director,
Tamil Nadu State Transport
Corporation, Puducherry. . . Respondent

This industrial dispute coming on 24-12-2014 for final hearing before me in the presence of Thiru Durai Arumugam, Counsel for the petitioner, Thiru N. Vinayagam, Counsel for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute has been referred as per the G.O. Rt. No. 58/AIL/Lab./J/2012, dated 29-3-2012 for adjudicating the following:-

(1) Whether the dispute raised by Puduvai Pradesa Pokkuvarathu Thozhilalar Sangam over charter of demands such as 2nd review of monthly salary *w.e.f.* 2002 onwards and recovery of illegal deduction of wages along with arrears to Thiru Panchanadhan and Thiru R. Rajendiran are justified?

(2) Whether the claim over recovery of illegally deducted wages and its arrears from the salary of Thiru M. Segar working in Puducherry branch of M/s. Tamil Nadu State Transport Corporation is justified.

(3) If justified, to what relief they are entitled to?

(4) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The facts giving rise to this industrial dispute as stood exposited from the claim petition runs thus:-

The respondent company was running with 400 employees at Mudaliarpet, Uppalam Road, in Puducherry State for the last 40 years. The respondent company did not provide any benefit for the employees of the said company. The respondent management did not comply with the labour welfare, the facts and was indulged in illegal activities. The respondent management did not provide the annual increment to the employees and did not take any necessary steps as to review the salary of the employees as per the standing order of the respondent management and was conducting the management administration whimsically. The respondent management provides the benefits only to those bear on good books of respondent management and the remaining employees were being ill-treated. Due to the respondent management illegal activities, the employees of the respondent management were lost lakhs of rupees which was entitled for the concerned employees. The employees Thiruvalargal Panchanadhan DR 1784, R. Rajendiran CR 2788 and M. Segar CR 1075, were affected due to the illegal activities of the respondent management and the dispute was brought before the conciliation officer. The respondent management authorities did not attend the conciliation process and no settlement was taken place the matter was referred to this court.

The said Panchanadhan was joining the respondent management company on 13-2-1987, the said Panchanadhan was entitled for review of the salary benefits as on 13-2-1993, as per the agreement made between the parties thereon. But after the lapse of seven years only, the said Panchanadhan was benefitted after review of the salary of him. The said Panchanadhan was not given the second salary review, due on 13-2-2001 till date. The respondent management was not assigning any valid reason for non-sanctioning of the salary increment. It was stated by the respondent management that the said Panchanadhan was negligently driving the vehicle and the said vehicle was made with an accident because which only the salary review was delayed for the said Panchanadhan. But, it was only a false representation of the management. The respondent management was conducting the *ex-parte* enquiry in the pretext of the drivers were driving the vehicle negligently and was accident taken place. Repentantly,

the increments entitled for the concerned drivers were not given of the salary and also there was reduction of basic pay as a punishment even the court of law bound found not guilty of the concerned drivers the punishment given by the respondent management authorities were not reviewed and was not cancelled. The said Panchanadhan was entitled for a sum of ₹ 2,74,892 with interest.

Likewise, the said Rajendiran was not given the second review of salary benefit which was matured even in the year of 2006, till date. The reason given by the respondent management was not legally valid. The reason stated by the respondent management, the said Rajendiran was absent from attending duty and was behaved disorderly. The enquiry conducted against the said Rajendiran was not fair and was illegally conducted. The respondent management had taken revenge against the said Rajendiran by non-providing the early increment and not review the salary then and there. Even the standing order of the respondent management did not mention the period to which the salary review be withheld. The said Rajendiran is entitled for a sum of ₹ 3,50,762 with interest as mentioned in the Annexure, which was withheld by the respondent management illegally.

The employee Mr. Sekar who was a conductor in the respondent management organisation whose number is 1075 and new number is TMO 149 was deducted the salary from ₹ 9,295 to ₹ 6,655 stating the reason that the said Sekar was absent from attending duty, from the date of 29-6-2006. For the period of three years, the said order was taken effect from the date of 21-5-2010, the said Sekar was a diabetic patient and was taking treatment and was on medical leave. The said Sekar had submitted his application with medical certificate with an endorsement by the respondent management authorities. In spite of the said fact, the respondent management authority was treating the said period as an absence period which was only revengical act and it was a anti-labour attitude, the respondent management did not provide the vehicle for attending the duty and the employees were returned without assigning any work, the attendants of the said employee were also noted in the concerned register. The respondent management had taken the action against the labour acts in the pretext of their absent from duty and the punishment given to the said Rajendiran and was not correct. The said Rajendiran should not be punished and the salary of the said Rajendiran should not be discussed and no amount be deducted. The claim petitioners, namely, Panchanadhan DR 1784, was entitled for a sum of ₹ 2,74,892 and the said Rajendiran, CR, was entitled for a sum of ₹ 3,50,752 and the said Sekar, CR 1075, New No. TMO 149 was entitled for the salary prescribed to him and the order of the deduction of salary of the said Sekar was to be cancelled.

3. *Per contra*, traversing the averments the claim statement, the respondent filed the counter with the averments which runs thus:

The averments made in the claim petition of the petitioner are totally false and was denied by the respondent. The averments made in the claim petition was to be proved by the petitioner themselves. The respondent management organisation was a Public Service Transport Organisation having Headquarters at Villupuram and is having Branch Office at Puducherry Union Territory. There are four hundred labour workmen in the said organisation, the workmen are entitled for all benefits as per the labour welfare Acts and were being given the respondent management authorities did not do any illegal acts against the workmen. The workmen are entitled and are being given annual increment of salary and wage revision. As per the Act, the industrial dispute before this court was arisen due to the non-wage revision to one Panchanadhan, driver and one R. Rajendiran CR and deduction of salary for three years for one Sekar, CR. As per the procedure this dispute before this court was to be risen, after the decision of the General Body Meeting or the Executive Meeting Resolution. But the dispute before this court, was not approved by either General Body Meeting or Executive Meeting and the dispute is to be dismissed *in liminine*. The said Panchandhan DR, was transfered to Sankarapuram Branch on 6-10-2010 and M. Sekar, CR was transfered to Chidambaram Branch on 19-2-2006. The said Panchanadhan and Sekar were not employees of the Puducherry Branch. This court is not having jurisdiction over the dispute regarding the said Panchanadhan and Sekar. The wage revision of said Panchanadhan and R. Rajendiran was not automatic and could not be given after the expiry of the prescribed period. The wage revision was not a matter of right, the wage revision was being given to the employees concerned, if the concerned management was satisfied with the work of the concerned employee for the development of the concerned management organisation. The wage revision was amount to a gift to the concerned employee given by the concerned management organisation. It is purely a discretionary power of the concerned management not otherwise as per the settlement between the management and the union members under section 12(3) of the Act. After the

completion of six years service of the concerned employee the first wage revision will be given from the said period. After the completion of eight years, second wage revision would be given. Provided, the said employee was found satisfactory for the said management employment and the concerned, employee was put his efforts for the development of the concerned organisation and there was no punishment during the said period. The said Panchanadhan had joined the respondent management organisation on 13-2-1987 as a driver and was confirmed on 1-11-1987 as a driver. The wage revision was given to him on 1-5-1995 after that after the completion of eight years. He would have been given the second wage revision, but the said Panchanadhan had given his vehicle on 12-12-1999 negligently and met with an accident and department of domestic enquiry was conducted following which the wage revision was postponed for three years from the date of 20-3-2000. Subsequently, also the said Panchanadhan had given his vehicle in a negligent manner on 24-11-2004 was met with an accident causing a death of a person, and a domestic enquiry was conducted following which the wage revision was postponed of five years from the date of 5-4-2006 as ordered. On 3-12-2005 also he drew the vehicle in a negligent manner and met with an accident causing death to a person due to which the basic salary was deducted from ₹ 6,390 to ₹ 4,440. The said deduction would be in force for three years, the suspension period was regularised as his leave period eligible to him. The final order was passed on 18-1-2007, the said Panchanadhan was absent from duty from 7-7-2010. The said Panchanadhan was given more punishment during his duty period and was absent from 7-7-2010. The said Panchanadhan was not given second wage revision, the wage revision would be given after the punishment period no illegal deduction was done to the said Panchanadhan salary. The demand of the union regarding the salary wage revision to Panchanadhan was not acceptable one. The petitioner did not take any necessary action to set aside the punishment given by the domestic enquiry authorities and was no appeal against the decision of the domestic enquiry authorities and the decision of the domestic enquiry is final.

The said Rajendiran had joined duty on 27-11-1992 as conductor and he was confirmed as a conductor on 1-10-1993. The wage revision was given to him on 1-5-2000 onwards. He was entitled for second wage revision from 1-5-2008, but the said Rajendiran was irregularly attending his duty from 14-6-2002 to 21-10-2002 for the period of 41 days. A domestic enquiry was conducted against him and was ordered that the wage revision should be postponed for one year without any cumulative effect from 5-7-2003. As per the final order from 22-12-2003, he was absent from duty and he was facing the domestic enquiry. Finally, his basic salary was deducted from ₹ 4440 to ₹ 3390 for five years on 16-12-2000 as final order. Subsequently, it was reviewed as per the petition given by him and it was decided that the five year period reduced to two years period without cumulative effect from 14-5-2000. On 26-6-2004 he misbehaved disorderly and domestic enquiry was conducted and his annual increment was postponed for one year from 27-5-2005. Subsequently, he was behaved disorderly on 13-4-2005 and was facing enquiry and his annual increment was postponed further one year, as per the order dated 16-12-2005, he was doing his duty irregularly. On 19-6-2005, while distributing the travelling tickets and was facing the domestic enquiry. His annual increment was postponed for further six years from 11-3-2006. He was suspended for three days for his irregular activities during his duty period on 16-4-2009 and was censure. As per the order dated 26-5-2010, he misbehaved with the Assistant Manager, Operation, on 30-5-2010 and was facing enquiry and suspended from his service and he was reinstated on 21-6-2010 pending enquiry. Subsequently, also he was misbehaved with the passenger and the Assistant Engineer, he was suspended from duty on 1-7-2010 and was reinstated on 19-10-2010. Finally his annual increment was postponed for two years with cumulative effect as per the final order dated 26-11-2010. The said Rajendiran was facing a chain of action and his wage revision was postponed for four years. The said Rajendiran was on leave on loss of pay from 112 days and was absent for attending duty for 278 days. Subsequently, he was absent without salary from attending duty for 390 days, the enquiry was also pending against him. The order passed on 21-11-2004, after due enquiry only the punishment was given to him which was only a lesser punishment. There was no appeal against the finding of the domestic enquiry authorities still the punishment given by the respondent management authorities is still in force.

The said Sekar who was a conductor having No.CR 1075 was absent from attending duty from 29-6-2006 and was facing enquiry and it was ordered that the basic pay of the said Sekar was to be reduced from ₹ 9295 to ₹ 6655 for three years from 22-5-2010. The said Panchanadhan, Rajendiran was not entitled for any benefit as decided by the

respondent management authorities as stated above and the said Sekar is also not entitled for any benefit claimed by him in the claim petition for the reasons stated above. The action taken by the respondent management authorities, as per standing order, the reduction of salary for the said persons was according to standing order. The said Panchanadhan, Rajendiran and Sekar were facing enquiry for the irregularities and were given the punishment for their irregularities. As decided by the respondent management authorities as per law and the punishment given to them were not arbitrarily.

4. On the side of the petitioner, PW.1 and PW.2 were examined, on the petitioner side Ex.P1 to Ex.P5 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed? or not?

6. *On this point:*

Heard. It was submitted by the Counsel for the petitioners that the petitioners, namely, one Panchanadhan, one Rajendiran were the employees of the Tamil Nadu Transport Corporation having Branch at Puducherry. The said petitioners were being represented through the petitioner union, namely, "Puduvai Pradesa Pokkuvarathu Thozhilalar Sangam". The said Panchanadhan was not given the salary increment as agreed and as per convention from the date of 13-2-1993. Subsequently, from 13-2-2001 also the said Panchanadhan was not given the salary increment as agreed. The said Rajendiran also was not given the salary increment as agreed for the concerned period. The said Panchanadhan and Rajendiran were entitled for the monetary benefit as claimed in the petition. The conciliation took place between the parties herein and the same was failed. Hence this dispute.

7. On behalf of the respondent, in spite of repeated adjournments there was no argument, a perusal of the counter statement filed by the respondent would show that the driver P. Panchanadhan and the conductor Rajendiran were proceeded with domestic enquiry for the lapses committed by them as mentioned thereon. The driver Panchanadhan was negligently driving the vehicle and caused the accident and was punished as per the disciplinary proceedings proceeded against him for the irregularity committed by said Panchanadhan. On the basis of the finding of the domestic enquiry proceedings, the said Panchanadhan was not given the benefit, namely, the salary increment as claimed. The salary benefit entitled to him would be given to him at appropriate time, after considering his performance. The said Rajendiran was also proceeded for his irregularity and domestic enquiry was conducted as per the finding of the disciplinary authority, the salary increment benefits were not given to him, the findings of the disciplinary authority was still inforce. Hence the benefit claimed by the petitioners, namely, driver Panchanadhan and conductor Rajendiran were not entitled for any salary increment as claimed in the petition. Another petitioner one Sekar who was the conductor of the respondent management Corporation also was proceeded with the disciplinary proceedings and was found guilty by the concerned disciplinary authority. The said findings of the disciplinary authority is also still inforce. Hence the said Sekar who is conductor is also not entitled for any benefit as claimed.

8. After hearing petitioner's Counsel and after perusing the counter statement filed by the respondent. records were perused. On perusal it comes to light, on behalf of the petitioner PW.1 and PW.2 were examined Ex.P1 to P5 were marked as exhibits and neither any evidence nor any documents produced by the respondent. On the basis of the evidence of PW.1, a perusal of the Ex.P2, wherein, it has been mentioned as follows (relevant portion):-

"விசாரணை அலுவலரின் முடிவு விசாரணையில் விசாரிக்கப்பட்ட சாட்சி அளித்துள்ள சாட்சியத்தின் அடிப்படையிலும் தாக்கல் செய்யப்பட்ட சான்றாவணங்களின் அடிப்படையிலும் அமைந்துள்ளன. எனவே உம்மீது சுமத்தப்பட்டுள்ள குற்றச்சாட்டுக்கள் உண்மையென நிரூபணமாகி உள்ளன என விசாரணை அலுவலர் அளித்துள்ள முடிவு சரி என்று ஏற்றுக்கொள்ளப்பட்டுள்ளன. உமது கடந்தகாலப் பணிப்பதிவேடுகளை ஆய்வு செய்ததில் நீர் இது போன்ற உயிர்சேத விபத்துக்களை புரிந்துள்ள ஒழுங்கீனத்திற்காக மூன்று முறைகள் உரிய தண்டனை உமக்கு வழங்கப்பட்டுள்ளன.

அதன் விவரங்கள் கீழே கொடுக்கப்பட்டுள்ளன.

வ. எண்	நாள்	குற்றங்கள்	தண்டனைகள்
(1)	(2)	(3)	(4)
1.	21-5-1989	உயிர்சேதமான விபத்து.	எச்சரிக்கை தண்டனை
2.	12-12-1999	உயிர்சேதமான விபத்து.	வருடாந்திர ஊதிய உயர்வை மூன்று வருட காலத்திற்கு நிரந்தரமாக (WC) தள்ளி வைத்தும் தற்காலிக வேலை நீக்கத்தில் இருந்த காலத்தை தகுதியுள்ள நாட்களுக்கு விடுப்பாகவும் வழங்கப்பட்டுள்ளது.

(1)	(2)	(3)	(4)
3.	24-11-2004	உயிர்சேதமான விபத்து.	வருடாந்திர ஊதிய உயர்வை ஐந்து வருட காலத்திற்கு நிரந்தரமாக (WC) தள்ளி வைத்தும் தற்காலிக வேலை நீக்கத்தில் இருந்த காலத்தை தகுதியுள்ள நாட்களுக்கு விடுப்பாகவும் வழங்கப்பட்டுள்ளது.

மேலும் உமது கடந்த காலங்களில் உமக்கு வழங்கப்பட்ட பிற தண்டனைகளின் விவரங்கள் கீழே கொடுக்கப்பட்டுள்ளன.

வ. எண்	நாள்	குற்றங்கள்	தண்டனைகள்
(1)	(2)	(3)	(4)
1.	2-11-1987	சிறு விபத்து	வருடாந்திர ஊதிய உயர்வை ஆறு மாத காலத்திற்கு தற்காலிகமாக தள்ளி வைக்கப்பட்டது.
2.	14-1-1988	சிறு விபத்து	சேதத்தொகை ₹50 பிடித்தம் செய்யப்பட்டது.
3.	13-2-1990	டயர் சேதம்	பணிப்பதிவேட்டில் பதியக்கூடிய எச்சரிக்கை தண்டனை.
4.	4-3-1991	டீசல் அதிகமாக செலவு செய்தது.	பணிப்பதிவேட்டில் பதியக்கூடிய எச்சரிக்கை தண்டனை.
5.	28-1-1992	ஸ்பிரிங்கு அசெம்பளி சேதம்.	பணிப்பதிவேட்டில் பதியக்கூடிய எச்சரிக்கை தண்டனை.
6.	17-2-1992	விபத்து	வருடாந்திர ஊதிய உயர்வை ஒரு வருட காலத்திற்கு (WC) நிரந்தரமாக தள்ளி வைக்கப்பட்டது.
7.	2-9-1992	சிறு விபத்து	வருடாந்திர ஊதிய உயர்வை ஒரு வருட காலத்திற்கு (WOC) தற்காலிகமாக தள்ளி வைக்கப்பட்டது.
8.	23-9-1994	டயர் சேதம்	சேத தொகைக்கு ₹ 100 பிடித்தம் செய்யப்பட்டது.
9.	21-9-1995	டயர் சேதம்	சேத தொகைக்கு ₹ 185 பிடித்தம் செய்யப்பட்டது.
10.	22-11-1996	பெரும் விபத்து	தற்காலிக வேலை நீக்க காலத்தைப் பணி நாட்களாகவும், எச்சரிக்கை தண்டனையாகவும் வழங்கப்பட்டது.
11.	27-9-2001	பணி செய்ய மறுத்தது.	தற்காலிக வேலை நீக்க காலத்தைப் பணி நாட்களாகவும், எச்சரிக்கை தண்டனையாகவும் வழங்கப்பட்டது.
12.	22-5-2002	டயர் சேதம்	சேத தொகைக்கு ₹ 100 பிடித்தம் செய்யப்பட்டது.
13.	5-6-2004	பணி செய்ய மறுத்தது.	பணிப்பதிவேட்டில் பதியக்கூடிய எச்சரிக்கை தண்டனை.
14.	21-9-2004	டயர் சேதம்	சேத தொகைக்கு ₹ 235 பிடித்தம் செய்யப்பட்டது.

நீர் அடிக்கடி உயிர்ச்சேத விபத்து, பெரு விபத்து மற்றும் சிறுவிபத்து புரிவதை வழக்கமாக கொண்டுள்ளீர். விசராணையில் உம்மீது நிரூபிக்கப்பட்ட குற்றச்சாட்டுக்கள் யாவும் நிலையாணை விதிகளின்படி கடுமையான தண்டனை விதிக்கதக்க ஒழுங்கீனமாகும். மேலும் உம்முடைய கடந்த கால பணியினை நன்கு பரிசீலித்ததில் நீர் பல குற்றங்கள் புரிந்துள்ளீர்".

9. A perusal of the exhibit P3, which is pertaining to the Rajendiran, wherein, it has been mentioned as follows (relevant portion):-

உமது கடந்த கால பணியில் புரிந்துள்ள குற்றங்களும், அடைந்த தண்டனைகளும் பின்வருமாறு.

வ. எண்	நாள்	குற்றங்கள்	தண்டனைகள்
(1)	(2)	(3)	(4)
1.	5-6-1994	அன்று ₹100 செலுத்து தொகையில் குறைவு வைத்து செலுத்தியது.	தற்காலிக வேலை நீக்கத்திலிருந்த நாட்களை குறித்தவகை தண்டனையாக அளித்து உத்தரவிடப்பட்டது.
2.	15-6-2006	அன்று பயணச் சீட்டு வழங்களில் முறைகேடு.	பணிப்பதிவேட்டில் பதியக்கூடிய எச்சரிக்கை.
3.	22-7-1996	அன்று 1 x 1.00 எப்என்சி 1 x 2.20 எப்என்சி 1 x 1.10 எப்என்சி.	பணிப்பதிவேட்டில் பதியக்கூடிய எச்சரிக்கை.
4.	4-11-1996	அன்று பணி செய்ய மறுத்தது.	பணிப்பதிவேட்டில் பதியக்கூடிய எச்சரிக்கை.
5.	28-11-1996	அன்று 2 x 0.75 எப்என்சி.	பணிப்பதிவேட்டில் பதியக்கூடிய எச்சரிக்கை.
6.		பணியில் ஒழுங்கீனம்.	பணிப்பதிவேட்டில் பதியக்கூடிய எச்சரிக்கை.
7.		முன்னறிவிப் பின்றி பணிக்கு வராமல் ஆப்சென்ட் ஆனது.	வருடாந்திர ஊதிய உயர்வை ஒரு வருட காலத்திற்கு (WC) தள்ளி வைத்து உத்தரவிடப்பட்டது.

மேலும் உமக்கு கழகத்தால் வழங்கப்பட்ட அனைத்து தகுதியுள்ள விடுப்புகளையும் நீர் அனுபவித்த பின்பும், 2001, 2002, 2003 மற்றும் 2004 (20-9-2004 வரை) ஆண்டுகளில் முறையே 34 நாட்கள், 130 நாட்கள், 11 நாட்கள் மற்றம் 74 நாட்கள் ஆப்சென்ட் ஆகியுள்ளார்.

எனவே விசாரணையயில் நிரூபிக்கப்பட்ட குற்றச்சாட்டுக்களின் கடுமையான தன்மையை கருத்தில் கொண்டும், உம்முடைய கடந்தகால பணியினை நன்கு பரிசீலித்துப் பார்த்தும், நீர் அடிக்கடி முன் அனுமதி பெறாமல் பணிக்கு வராமல் ஆப்சென்ட் ஆவதையே வழக்கமாக கொண்டிருப்பதாலும், உம்மை இக்கழகத்தின் பணியிலிருந்து நிரந்தரமாக வேலை நீக்கம் (Removal from service) செய்ய பூர்வாங்க முடிவு எடுக்கப்பட்டு மேற்படி தண்டனையை ஏன் வழங்கக்கூடாது என்பதற்கான காரணத்தையும், உமது விளக்கத்தையும் எழுத்து மூலமாக அளிக்கும்படி கேட்டு பார்வை ஏழில் கண்ட காரணம் கேட்கும் குறிப்பாணை உமக்கு சார்வு செய்யப்பட்டது. காரணம் கேட்கும் குறிப்பாணை நீர் பார்வை எட்டில் அளித்த விளக்கம் பெறப்பட்டு சம்பந்தப்பட்ட பதிவுகளுடன் நன்கு பரிசிலிக்கப்பட்டது. விளக்கத்தில் பூர்வாங்க முடிவை மாற்றம் செய்ய எவ்வித புதிய முகாந்திரமும் சொல்லப்படவில்லை. உம்மீது விசாரணையில் நிரூபிக்கப்பட்ட குற்றச்சாட்டுக்களின் கடுமையான தன்மையைக் கருத்தில் கொண்டும் உமது கடந்தகால பதிவேடுகளை நன்கு பரிசீலித்தும் பூர்வாங்க முடிவை மாற்றம் செய்து திரு. ஆர். ராஜேந்திரன், நடத்துனர் பணி எண் கிஆர் 2788 ஆகிய நீர் ₹ 3390-75-5490 என்ற ஊதிய விகிதத்தில் தற்போது பெற்று வரும் அடிப்படை சம்பளம் ₹ 4440-ஐ ₹ 3390-ஆக குறைத்தும் மேற்படி ஊதிய குறைப்பை (Pay reduction) 21-11-2004 முதல் ஐந்து ஆண்டுகளுக்கு அமல்படுத்தவும், மேற்படி ஊதிய குறைப்பு காலம் உமது எதிர்கால ஊதிய உயர்வை தள்ளி வைக்கவும். (Basic pay is reduced and fixed at ₹ 3390 from present basic pay of ₹ 4440 in the time scale of pay of ₹ 3390-75-5490 with effect from 21-11-2004. The period of pay reduction is fixed as 5 years (Five years) on restoration the period of pay reduction will operate to postpone his future increments) இதன் மூலம் உத்தரவிடப்படுகிறது.

மேற்படி இந்த இறுதியாணையின் பேரில் மேல்முறையீடு செய்ய விரும்பினால் இந்த இறுதியாண கிடைக்கப் பெற்ற 60 நாட்களுக்குள் மேலாண் இயக்குநர் அவர்களிடம் மேல்முறையீடு செய்யலாம் என தெரிவிக்கப்படுகிறது.

A careful study of the abovesaid exhibits, namely, Ex.P2 and P3 would reveal the fact that the said Panchanadhan and Rajendiran were subject to domestic enquiry and was found guilty and were given punishment as mentioned thereon, *i.e.* the petitioner's documents themselves would show that the petitioners were given punishment as mentioned thereon. A perusal of the Ex.P3 would also reveal the fact that the punished persons, namely, deliquents, namely, Panchanadhan and Rajendiran be preferred an appeal against the order of the disciplinary authority before the concerned competent authority within the prescribed time. But it was not established by the petitioners, namely, the said Panchanadhan and Rajendiran and another Sekar that the orders passed by the concerned disciplinary authorities as exhibited in Ex.P2 and P3 were set aside by any competent authority.

10. A cursory reading of the Central Civil Services Classification, Control and Appeal Rules, rule 24, wherein, it has been mentioned as follows :-

"24. Appellate Authority

(1) A Government servant, including a person who has ceased to be in Government service, may prefer an appeal against all or any of the orders specified in rule 23 to the authority specified in this behalf either in the Schedule or by a general or special order of the President or, where no such authority is specified.

(i) Where such Government servant is or was a member of a Central Service, Class I or Class II or holder of a Central Civil post, Class I or Class II,-

(a) to the appointing authority, where the order appealed against is made by an authority subordinate to it; or

(b) to the President where such order is made by any other authority;

(ii) where such Government servant is or was a member of a Central Civil Service, Class III or Class IV or holder of a Central Civil post, Class III or Class IV, to the authority to which the authority making the order appealed against is immediately subordinate.

(2) Notwithstanding anything contained in sub-rule(1)-

(i) an appeal against an order in a common proceeding held under rule 18 shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate:

Provided that where such authority is subordinate to the President in respect of a Government servant for whom President is the appellate authority in terms of sub-clause (b) of clause (i) of sub-rule (1), the appeal shall lie to the President.

(ii) where the person who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate.

(3) A Government servant may prefer an appeal against an order imposing any of the penalties specified in rule 11 to the President, where no such appeal lies to him under sub-rule (1) or sub-rule (2), if such penalty is imposed by any authority other than the President, on such Government servant in respect of his activities connected with his work as an office-bearer of an association, federation or union, participating in the Joint Consultation and Compulsory Arbitration Scheme."

A careful study of the above said rule would reveal the fact that any Government servant may prefer an appeal against any order of the authority, namely, disciplinary authority before the competent concerned appellate authority or before any competent authority.

11. In the light of the above said rule, a perusal of the records on hand would reveal the fact that it was not case of the petitioners that the punishments awarded by the concerned disciplinary authority against the said Panchanadhan and Rajendiran were set aside either by the concerned appellate authority or by any competent authority. Until and unless, the punishment given by the disciplinary authority against the said Panchanadhan and said Rajendiran, the benefit claimed in the petition would not be entitled for them. For the simple reason, that already a order was issued by the competent authority for non-sanctioning the benefit to the petitioner Panchanadhan and Rajendiran.

12. It is pertinent to note down here one Sekar who was a party to the conciliation proceedings did neither produce any evidence nor any documents to substantiate his claim before this court. Hence the court decided on a considered view, the case of the petitioners was not established before this court and the petitioners are not entitled for any benefit as claimed in the petition.

13. In the result, it is ordered that the petitioners, namely, Panchanadhan, Rajendiran and Sekar were not entitled for any monetary benefit as claimed in the petition and the reference made in G.O. No. 58, dated 29-3-2012 is answered accordingly.

Typed to my dictation, corrected and pronounced by me in the open court on this the 21st day of January 2015.

G. DHANARAJ,
Presiding Officer,
Industrial Tribunal, Pondicherry.

List of petitioner's witnesses:

PW.1 — 22-11-2013 — P. Panchanadhan

PW.2 — 3-9-2014 — R. Rajendiran

List of respondent's witness: Nil

List of petitioner's exhibits:

Ex.P1 — Photocopy of the objection letter by respondent, dated 21-11-2011.

Ex.P2 — Photocopy of the order of basic salary deductions in Thiru P. Panchanadhan, dated 24-1-2007.

Ex.P3 — Photocopy of the basic salary deductions in Thiru R. Rajendiran, dated 16-12-2004.

Ex.P4 — Photocopy of the 12(3) agreement in all Labour Associations, dated 6-2-2008.

Ex.P5 — Photocopy of the Legal Standing Orders in Association, dated 12-1-1981.

List of respondent's exhibits: Nil

G. DHANARAJ,
Presiding Officer, Industrial Tribunal,
Pondicherry.

GOVERNMENT OF PUDUCHERRY

OFFICE OF THE CHIEF EDUCATIONAL OFFICER

No. 650/CEO/Exam Cell/2014-15.

Puducherry, the 13th July 2015.

NOTIFICATION

It is hereby notified that the original S.S.L.C. Mark Certificate under Register Number 306374 of April 1993 in respect of A. Said Pirane, an ex-pupil of Ilango Adigal Government Higher Secondary School, Muthiraiyarpalayam is reported to have been lost and beyond the scope of recovery it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6 for cancellation, as it is no longer valid.

N. RAMALINGAM,
Chief Educational Officer.

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GOVERNMENT OF PUDUCHERRY

OFFICE OF THE CHIEF EDUCATIONAL OFFICER

No. 650/CEO/Exam Cell/2014-15.

Puducherry, the 13th July 2015.

NOTIFICATION

It is hereby notified that the original S.S.L.C. Mark Certificate, under Register Number 491745 of March 2005 in respect of S. Sivachandran, an ex-pupil of Sri Sankar's Vidhyalaya, Villianur is reported to have